

(Caption of Case)

In Re: Friends of the Earth and Sierra Club,
Complainants/ Petitioners,

v.

South Carolina Electric & Gas Co.,
Defendant / Respondent.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2017 - 207 - E

(Please type or print)

Submitted by: Robert Guild

SC Bar Number: 2358

Address: 314 Pall Mall Street

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other: oral argument requested on motion

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input checked="" type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input checked="" type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

ROBERT GUILD

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July 21, 2017

Ms. Jocelyn D. Boyd
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

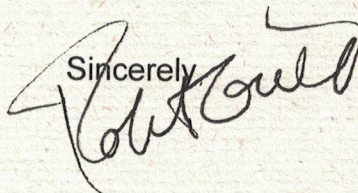
In Re: Friends of the Earth and Sierra Club v. SCE&G,
Prudence of South Carolina Electric & Gas Company Construction of a
Nuclear Base Load Generation Facility at Jenkinsville, South Carolina and the
Unjust and Unreasonable Rates Related Thereto
Docket No. 2017-207--E

Dear Ms. Boyd:

Enclosed please find for filing and consideration the Response in Opposition of Friends of the Earth and Sierra Club to SCE&G's Motion to Dismiss, together with Certificate of Service reflecting service upon the parties.

We ask the Commission to expedite consideration of this Motion by either summary denial or expedited scheduling of oral argument in order to avoid further delay in the hearing in this matter.

With kind regards I am

Sincerely


Robert Guild

Encl.s

CC: K. Chad Burgess, Esquire
Shannon Bowyer Hudson, Esquire
J. Blanding Holman, IV, Esquire



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-207-E

In Re: Friends of the Earth and Sierra Club,)	
Complainants/ Petitioners,)	
)	
v.)	
)	
South Carolina Electric & Gas Co.,)	
Defendant / Respondent.)	

RESPONSE IN OPPOSITION TO SCE&G'S MOTION TO DISMISS

Pursuant to R. 103-829 of the Commission's Rules and Rules 12 and 60(b) of the South Carolina Rules of Civil Procedure, Friends of the Earth and Sierra Club hereby respond in opposition to SCE&G's Motion to Dismiss their Complaint/Petition, now pending in this matter. By its Motion to Dismiss, SCE&G asserts that it's imprudent, uneconomic continued construction of the failed V.C. Summer baseload nuclear project is wholly beyond the authority of this Commission to control; and that the unjust and unreasonable rates to be charged to the utility's ratepayers are wholly beyond the Commission's authority to redress through reparations, reductions and refunds. In short, SCE&G asserts that it is wholly above and beyond the reach of the law in dictating South Carolina's energy future and the impact of such private utility management decisions on its captive ratepayers. Friends of the Earth and Sierra Club urge this Commission to

summarily deny SCE&G's Motion to Dismiss and allow this matter to proceed to a hearing on the merits; or, in the alternative, to set this matter for expedited oral argument and decision. In the meantime, Friends of the Earth and Sierra Club urge the Commission to reject SCE&G's efforts to delay this proceeding by directing it to provide timely responses to the outstanding First Interrogatories, Document Production Requests and Request for Entry, served upon the Company by Complainants July 7, 2017, and to meet the schedule for prefiled testimony provided for by the Commission's Rules and the July 6, 2017, Standing Hearing Officer Directive in this matter.

Fundamentally, the motion to dismiss for failure to state facts sufficient to constitute a cause of action, pursuant to Rule 12(b)(6), SCRCP, must fail if the facts and inferences drawn from those facts, as alleged, would entitle the complainants to relief, "on any theory."

Under Rule 12(b)(6), a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Id.*

Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 at 826 (2009). Granting SCE&G's Motion to Dismiss would thus require complete rejection, "on any theory," of the Commission's authority to (1) require a prudence review of continued construction or abandonment of the failing project; (2) the Commission's authority to require SCE&G to cease and desist expending unauthorized and excessive capitol costs on an imprudent

generating project; (3) the Commission's authority to assess and determine the prudence of an alternative energy resource plan, including energy efficiency and renewable generation, to replace the abandoned project; and (4) the Commission's authority to remedy the impact of unjust, unreasonable and unauthorized rates charged to the Company's ratepayers through ordering payment of refunds and reparations. In short, granting SCE&G's Motion to Dismiss would require the Commission to admit that it is powerless to effectively regulate this utility and powerless to stop the Company from continuing to imprudently incur costs for this failed project at its ratepayers' expense.

With respect to continued construction expenditures and previously approved electric rates associated with the project, the Company insists that the Commission's prior approvals of this project and the periodic rate increases approved to finance it, insulate those decisions from any further scrutiny as "final and binding orders of the Commission." Motion at p. 2. In effect the Company says "we got away with it, and it's not fair to look back." This view, however, is in direct conflict with the very structure of the Baseload Review Act's prudence standard which expressly requires the Commission to ask, "what did the Company know, and when did they know it," to determine whether or not the utility should have anticipated, minimized or avoided the imprudent and excessive project costs:

the commission may disallow the additional capital costs that result from the deviation, but only to the extent that the failure by the utility to anticipate or avoid the deviation, or to minimize the resulting expense, was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize its effect.

S.C. Code § 58-33-275 (E). "Base load review orders; parameters; challenges; recovery

of capital costs.” Thus, looking back in time at information known by the utility is expressly required by the BLRA.

Moreover, the finality of judgements is inherently subject to the limitations essential to preserve fundamental fairness, integrity and public confidence in the judicial and quasi-judicial process. The South Carolina Rules of Civil Procedure expressly provide for relief from final judgement for a number of reasons including, “mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party,” Rule 60(b), SCRCP.

In addition, independent of the enumerated reasons listed under the Rule, a “fraud on the court” is deemed to subvert the very integrity of the institution itself, and to provide an independent basis for relief from a final judgement. Chewning v. Ford Motor Company, 346 S.C. 28, 550 S.E.2d 584 (2001). Pending discovery by the Complainants seek precisely such evidence of what SCE&G knew and when the Company knew it regarding the failure of this project when it sought and obtained the very Commission orders it now relies upon. The ability of Complainants to ‘claw back’ unjust and unreasonable rates imposed on ratepayers to finance this project through reparations and refunds depends on the factual evidence which this proceeding seeks to develop. Such reparation or refunds are expressly authorized by statute and are, thus, within the powers authorized for the Commission in its regulation of the Company. South Carolina Electric and Gas Company v. The Public Service Commission, 275 S.C. 487, 272 S.E.2d 793 (1980), citing S.C. Code § 58-27-960.

Unless we surrender to the Company’s claims that this Commission is absolutely

powerless to address and remedy the impacts on ratepayers of the on-going financial meltdown of the V.C.Summer nuclear project, it simply can not be concluded as a matter of law that the Complainants' can not obtain any relief "on any theory," Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 at 826 (2009).

With SCE&G spending hundreds of millions of dollars on this failed project since the March Westinghouse bankruptcy- without Commission approval- it is high time for Commission intervention to stop the financial bleeding and act to protect the Company's ratepayers.

CONCLUSION

For the foregoing reasons Friends of the Earth and Sierra Club urge the Commission to deny SCE&G's Motion to Dismiss; require the Company to fully respond to pending discovery requests and meet the established schedule for prefiling testimony; in order to allow a timely hearing and decision on this Complaint.

July 21, 2017



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ATTORNEY FOR COMPLAINANTS / PETITIONERS
FRIENDS OF THE EARTH AND SIERRA CLUB

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the above Response by placing copies of same in the United States Mail, first-class postage prepaid, addressed to:

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July 21, 2017



Robert Guild